

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

**Case No. A-6291**

**PETITION OF TERRY PEAY**  
(Hearing held June 24, 2009)

**OPINION OF THE BOARD**  
(Effective date of Opinion, July 16, 2009)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(1). The petitioner proposes the construction of an accessory structure/detached garage that requires a variance to be located in the front yard. Section 59-C-1.326(1) requires accessory structures to be located in the rear yard only.

Anne Peay, the petitioner's wife, and Curt Schreffler of CAS Engineering, Inc., appeared with the petitioner at the public hearing.

The subject property is Lot 20, Block 5, Bannockburn Subdivision, located at 7201 Broxburn Drive, Bethesda, Maryland, 20817, in the R-200 Zone (Tax Account No. 03373095).

Decision of the Board: Requested variance **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes the construction of a 21.1 x 25.1 foot accessory structure/detached garage.
2. The petitioner testified that he and his wife are active in the neighborhood and that they have lived in the neighborhood for 17 years. The petitioner testified that the house on the subject property is a Charles Goodman House and that Mr. Goodman was the architect that designed National Airport. The petitioner testified that the subject property is a unique lot that is very constrained topographically because of its steep slopes, its grade issues, and its large rock outcroppings. The petitioner testified that the lot has mammoth rocks located on it. See Exhibit Nos. 4 [site plan] and 14(a) through 14(j) [photographs].

3. The petitioner testified that the house is sited 280 feet from the street and that the house and the proposed garage will not be visible from the street. The petitioner testified that one-half of the subject property is under a conservation category two easement. The petitioner testified that the property is on well water and that the well is located in the northern front yard. The petitioner testified that it is impossible to site a garage at the rear of the house because of the lot's existing conditions. See Exhibit No. 17 [rendered site plan].
4. Mr. Schreffler testified that the house on the subject property is sited 10 feet higher than the property's driveway. Mr. Schreffler testified that the distance from the street to the first step to the house is approximately 220 feet and that the rise in elevation over that distance is 44 to 45 feet. Mr. Schreffler testified that distance from the first step to the house is 43 feet and that the rise in that elevation over this distance is 9 feet. See Exhibit Nos. 8 [M-NCPPC property and topo map] and 10 [zoning vicinity map].
5. Mr. Schreffler testified that the subject property has significant rock outcroppings and steeply wooded slopes. Mr. Schreffler testified that none of the surrounding lots have the combination of the lot's shape, the significant rock outcroppings, the steep slopes and the mature vegetation and trees that exist on the subject property.

### **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the subject property's large number of rock outcroppings, steeply sloped topography, the existing well coupled with the lot's unusual shape are conditions peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the construction of an accessory structure/detached garage in the front yard is the minimum reasonably necessary.

*(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the variance will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

*(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the variance will have no effect on adjoining and neighboring properties and therefore will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of to permit the construction of an accessory structure/detached garage in the front yard is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5.

The Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board Chair Catherine G. Titus was necessarily absent and did not participate in this Resolution. On a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with Walter S. Booth, in agreement, and with David K. Perdue, Vice Chair, in opposition, the Board adopted the foregoing Resolution.

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David K. Perdue  
Vice Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 16th day of July, 2009.

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Katherine Freeman  
Executive Director

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.